



# RULE-MAKING ORDER

**CR-103 (June 2004)**  
(Implements RCW 34.05.360)

**Agency:** Board of Industrial Insurance Appeals

☒ **Permanent Rule**  
☐ **Emergency Rule**

**Effective date of rule:**

**Permanent Rules**

☒ 31 days after filing.  
☐ Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

☐ Immediately upon filing.  
☐ Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

☐ Yes ☒ No If Yes, explain:

**Purpose:** To revise the Board's rules of practice and procedure by amending WAC 263-12-01501, WAC 263-12-045, WAC 263-12-093, and WAC 263-12-097. Changes are necessary to meet current business needs and are housekeeping in nature.

**Citation of existing rules affected by this order:**

Repealed: N/A

Amended: WAC 263-12-01501, WAC 263-12-045, WAC 263-12-093, and WAC 263-12-097.

Suspended: N/A

**Statutory authority for adoption:** RCW 51.52.020

**Other authority :** N/A

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR 06-09-096 on April 19, 2006 (date).

Describe any changes other than editing from proposed to adopted version:

**WAC 263-12-045(5):** The proposed phrase "it may be inappropriate" is replaced with the phrase "...there may be a conflict of interest for an industrial appeals judge to hear a particular appeal or when it is necessary to ensure an appearance of fairness, the board ...".

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
e-mail \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**Date adopted:**

May 25, 2006

**NAME (TYPE OR PRINT)**

THOMAS E. EGAN

**SIGNATURE**

**TITLE** Chairperson

**CODE REVISER USE ONLY**

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	<u>-0-</u>	Amended	<u>-0-</u>	Repealed	<u>-0-</u>
<b>Federal rules or standards:</b>	New	<u>-0-</u>	Amended	<u>-0-</u>	Repealed	<u>-0-</u>
<b>Recently enacted state statutes:</b>	New	<u>-0-</u>	Amended	<u>-0-</u>	Repealed	<u>-0-</u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	<u>-0-</u>	Amended	<u>-0-</u>	Repealed	<u>-0-</u>
-----	------------	---------	------------	----------	------------

**The number of sections adopted in the agency's own initiative:**

New	<u>-0-</u>	Amended	<u>4</u>	Repealed	<u>-0-</u>
-----	------------	---------	----------	----------	------------

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>-0-</u>	Amended	<u>4</u>	Repealed	<u>-0-</u>
-----	------------	---------	----------	----------	------------

**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>      </u>	Amended	<u>      </u>	Repealed	<u>      </u>
<b>Pilot rule making:</b>	New	<u>      </u>	Amended	<u>      </u>	Repealed	<u>      </u>
<b>Other alternative rule making:</b>	New	<u>      </u>	Amended	<u>      </u>	Repealed	<u>      </u>

**AMENDATORY SECTION** (Amending WSR 04-22-047, filed 10/28/04, effective 11/28/04)

**WAC 263-12-01501 Communications and filing with the board. (1)**  
**Communications with the board.**

(a) **Where to file.** All written communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions, briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(b) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board personally, by mail, or by telephone facsimile.

(i) **Filing personally.** The filing of a written communication with the board personally is perfected by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(ii) **Filing by mail.** The filing of a written communication with the board is perfected by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(iii) **Filing by telephone facsimile.**

(A) The filing of a written communication with the board by telephone facsimile is perfected when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment ~~((in Olympia))~~. All facsimile communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions, briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(B) The hours of operation of the board's telephone facsimile equipment are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. If a transmission of a written communication commences after these hours of operation the written communication shall be deemed filed on the next succeeding business day.

~~((B))~~ C) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission.

~~((E))~~ D) No written communication should exceed fifteen pages in length, exclusive of the cover page required by this rule.

~~((D))~~ E) The party attempting to file the written communication by telephone facsimile bears the risk that the written communication will not be legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

~~((E))~~ E) The board may require a party to file an original of any document previously filed by telephone facsimile.

(iv) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's internet site. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Otherwise the notice of appeal is considered filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board must notify the filing party of the rejection.

(c) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the executive secretary of the board.

(d) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number which was assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be furnished to all other parties or their representatives of record, and the original shall demonstrate compliance with this requirement. All written communications with the board shall be on paper 8 1/2" x 11" in size.

**AMENDATORY SECTION** (Amending WSR 03-02-038, filed 12/24/02, effective 1/24/03)

**WAC 263-12-045 Industrial appeals judges.** (1) **Definition.** Whenever used in these rules, the term "industrial appeals judge" shall include any member of the

board, the executive secretary, as well as any duly authorized industrial appeals judge assigned to conduct a conference or hearing.

(2) **Duties and powers.** It shall be the duty of the industrial appeals judge to conduct conferences or hearings in cases assigned to him or her in an impartial and orderly manner. The industrial appeals judge shall have the authority, subject to the other provisions of these rules:

(a) To administer oaths and affirmations;

(b) To issue subpoenas on request of any party or on his or her motion.

Subpoenas may be issued to compel:

(i) The attendance and testimony of witnesses at hearing and/or deposition, or

(ii) The production of books, papers, documents, and other evidence for discovery requests or proceedings before the board;

(c) To rule on all objections and motions including those pertaining to matters of discovery or procedure;

(d) To rule on all offers of proof and receive relevant evidence;

(e) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;

(f) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as he or she deems necessary to fairly and equitably decide the appeal, including the obtaining of physical, mental, or vocational examinations or evaluations of workers;

(g) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;

(h) To issue orders joining other parties, on motion of any party, or on his or her own motion when it appears that such other parties may have an interest in or may be affected by the proceedings;

(i) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;

(j) To schedule the presentation of evidence and the filing of pleadings, including the filing of perpetuation depositions;

(k) To close the record on the completion of the taking of all evidence and the filing of pleadings and perpetuation depositions. In the event that the parties do not confirm witnesses or present their evidence within the timelines prescribed by the judge, the judge may consider appropriate sanctions, including closing the record and issuing a proposed decision and order;

(l) To take any other action necessary and authorized by these rules and the law.

(3) **Interlocutory review.** A party may request interlocutory review pursuant to WAC 263-12-115(6) of any exercise of authority by the industrial appeals judge under this rule.

(4) **Substitution of industrial appeals judge.** At any time the board or a chief industrial appeals judge or designee may substitute one industrial appeals judge for another in any given appeal.

(5) **Pro tem industrial appeals judge.** If the board or the chief industrial appeals judge determines that there may be a conflict of interest for an industrial appeals judge to hear a particular appeal or when it is necessary to ensure an appearance of fairness, the board may appoint a pro tem industrial appeals judge to preside over the appeal and, if necessary, issue a proposed decision and order.

**AMENDATORY SECTION** (Amending WSR 03-02-038, filed 12/24/02, effective 1/24/03)

**WAC 263-12-093 Conferences -- Disposition of appeals by agreement. (1)**

If an agreement concerning final disposition of any appeal is reached by all the parties present or represented at a conference, an order shall be issued in conformity with their agreement, providing the board finds the agreement is in accordance with the law and the facts.

(a) In industrial insurance cases, if an agreement concerning final disposition of the appeal is reached by the employer and worker or beneficiary at a conference at which the department is represented, and no objection is interposed by the department, an order shall be issued in conformity with their agreement, providing the board finds that the agreement is in accordance with the law and the facts. If an objection is interposed by the department on the ground that the agreement is not in accordance with the law or the facts, a hearing shall be scheduled.

(b) In cases involving the Washington Industrial Safety and Health Act, an agreement concerning final disposition of the appeal among the parties must include regardless of other substantive provisions covered by the agreement: (i) A statement reciting the abatement date for the violations involved, and (ii) A statement confirming that the penalty assessment for contested and noncontested violations has or will be paid.

(c) Where all parties concur in the disposition of an appeal but the industrial appeals judge is not satisfied that the agreement is in conformity with the facts and the law or that the board has jurisdiction or authority to order the relief sought, the industrial appeals judge may require such evidence or documentation necessary to adequately support the agreement in fact and/or in law.

(2) All agreements reached at a conference concerning final disposition of the appeal shall be stated on the record by the industrial appeals judge and the parties shall indicate their concurrence on the record. The record may either be transcribed by a court reporter or recorded and certified by the industrial appeals judge conducting the conference.

The industrial appeals judge may, in his or her discretion accept an agreement for submission to the board in the absence of one or more of the parties from the conference, or without holding a conference.

(a) In such cases the agreement may be confirmed in writing by the parties to the agreement not in attendance at a conference, except that the written confirmation of a party to the agreement not in attendance at a conference will not be required where the industrial appeals judge is satisfied of the concurrence of the party or that the party received notice of the conference and did not appear.

(b) In cases where no conference has been held but the parties have informed the judge of their agreement, yet no written confirmation has been received, the judge may submit a judge's report of proceedings which encompasses the agreement.

~~((The judge will submit copies of the report to the parties and, if no objection is received within ten days, the agreement may be submitted to the board for approval.))~~

(3) In the event concurrence of all affected employees or employee groups cannot be obtained in cases involving agreements for final disposition of appeals under the Washington Industrial Safety and Health Act, a copy of the proposed agreement shall be posted by the employer at each establishment to which the agreement applies in a conspicuous place or places where notices to employees are customarily posted. The agreement shall be posted for ten days before it is submitted to the board for entry of the final order. The manner of posting shall be in accordance with WAC 263-12-059. If an objection to the agreement is interposed by affected employees or employee groups prior to entry of the final order of the board, further proceedings shall be scheduled.

(4) The parties present at a conference may agree to a vocational evaluation or a further medical examination of a worker or crime victim, including further evaluative or diagnostic tests, except such as require hospitalization, by medical or vocational experts acceptable to them, or to be selected by the industrial appeals judge. In the event the parties agree that an order on agreement of parties or proposed decision and order may be issued based on the report of vocational evaluation or medical examination, the industrial appeals judge may arrange for evaluation or examination and the board will pay reasonable and necessary expenses involved. Upon receipt by the board, copies of the report of such examination or evaluation will be distributed to all parties represented at the conference and further appropriate proceedings will be scheduled or an order on agreement of parties or proposed decision and order issued. If the worker or crime victim fails to appear at the evaluation or examination, the party or their representative may be required to reimburse the Board for any fee charged for their failure to attend.

**AMENDATORY SECTION** (Amending WSR 00-23-022, filed 11/7/00, effective 12/8/00)

**WAC 263-12-097 Interpreters.** (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in a hearing before the board of industrial insurance appeals, the industrial appeals judge may appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW and General Rule provisions GR 11, GR 11.1, and GR 11.2.

(2) The provisions of General Rule 11.3 regarding telephonic interpretation shall not apply to the board's use of interpreters.

((2) 3) The industrial appeals judge shall make a preliminary determination that an interpreter is able to accurately interpret all communication to and from the impaired or non-English-speaking person and that the interpreter is impartial. The interpreter's ability to accurately interpret all communications shall be based upon either (a) certification by the office of the administrator of the courts, or (b) the interpreter's education, certifications, experience, and the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding. The parties or their representatives may question the interpreter as to his or her qualifications or impartiality.

~~((3) An interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets when the communication is privileged by law. When a case is still pending in which an interpreter provided services, the interpreter shall not be examined as to any information the interpreter obtained, without the written consent of the parties to the communication.))~~

(4) The board of industrial insurance appeals will pay interpreter fees and expenses when the industrial appeals judge has determined the need for interpretive services as set forth in subsection 1. When a party or person for which interpretive services were requested fails to appear at the proceeding, the requesting party or the party's representative may be required to bear the expense of providing the interpreter.